Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

FORD MOTOR COMPANY,

Petitioner,

v.

DEE-WITT C. SPERAU AND SAMUEL R. FOSTER, II,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court of Alabama

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Dee-Witt C. Sperau ("Mr. Sperau") and Samuel R. Foster, II ("Mr. Foster"), respectfully submit this brief in opposition to the petition of Ford Motor Company ("Ford") for a writ of *certiorari* to review the judgment of the Supreme Court of Alabama in this case.

STATEMENT OF THE CASE

The trial court and the Supreme Court of Alabama held that the $6 million punitive damages award against Ford in this case was not excessive after reviewing the award in accordance with the procedures established by the Supreme Court of Alabama in *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986), and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. (1989), and approved by this Court in *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S. Ct. 1032, 113 L.Ed.2d 1 (1991).[1] Pertinent evidence supporting the jury's verdict in this case will be summarized in the discussion which follows:

1. In December 1984 Ford management committed to have 320 black dealers by year-end 1989 – a goal described by Ford as "extremely aggressive". (R. 1931; C. 2005-2008, 4679-4682).[2] In order to accomplish this

[1] The facts upon which this case was decided by the Supreme Court of Alabama are recited in the opinion reproduced in Petitioner's Appendix at pages 1a through 42a.

[2] The designation "R. ___" refers to the Reporter's Transcript of the trial below. The designation "C. ___" refers to the Clerk's Record, which is comprised of pleadings, motions, briefs, and trial exhibits.

extremely aggressive goal, district managers were assigned objectives for their particular sales district and this became a factor in performance evaluations of Ford executives in the various sales districts, including specifically the evaluations of district sales managers and market representation managers. (R. 825, 899, 912-913, 921, 1448).

2. Based upon historical experience, Ford management knew that a substantial disparity existed in the profitability of black dealerships compared to non-minority dealerships. The return on guide investment for black dealerships compared to white dealerships was substantially lower, whereas the percentage of black dealers in a loss position was considerably higher when compared to white dealers for the period 1984 through 1987, and after. (C. 4676, 4687, 4709, 4738, 5305, 5326). As early as October 1985 Ford management knew that "[t]he more profitable dealers have generally been in business longer, all over two years, and are our most experienced." (C. 4687, 4710). In addition to the black dealers' lack of retail management experience, "higher fixed costs" was another factor identified by Ford contributing to the differences in performance of black dealers in comparison to white dealers. (C. 4711). These fixed costs included higher interest costs, floor plan expense, rents, depreciation and insurance costs, and blue sky. (C. 5327). Ford management also recognized that black dealer candidates were being targeted for dealerships in less desirable locations. Beginning in 1987 Ford Motor Credit Company experienced higher credit losses on the black dealer portfolio due, in

part, "from the geographic and demographic disadvantages that many black dealers faced because of geographic location." (C. 5310). These factors led Ford management to conclude in October 1987 that "because of the marginal profitability of newly appointed dealers, and our aggressive black dealer appointment target, we will continue to have a high number of black loss dealers until they have gained more retail experience." (C. 4739). Ford made no distinction in this regard as to private capital or dealer development dealers.

3. Ford management commenced aggressively prospecting for black dealer candidates after the announcement of the extremely aggressive appointment objectives in December 1984. (C. 4704). Ford management recognized its goals were in jeopardy as early as October 1986 when the following was stated: "Unfortunately, the number of newly appointed private capital dealers have not increased significantly. . . . The lack of candidates with required unencumbered capital, approximately $350,000, has significantly reduced our ability to appoint private capital investors." (C. 4117). In November 1987 Ford management stated that "[t]he primary problem confronting the Vehicle Divisions is the availability of points acceptable to black candidates on the basis of cost, size, profit potential and location." (C. 4733). In October 1987 Ford management conceded that "[t]o date, the record of attracting private capital dealer appointments has been disappointing." (C. 4754).

4. Given the dismal experience of black dealers participating in Ford's Minority Dealer Program, how would it be possible for Ford in 1988 to recruit a black private capital dealer candidate? It was done in the case of Mr.

Foster by misrepresenting the profitability experience of black dealer candidates participating in the Program, by concealing the historical data showing these representations to be false, and by providing to Mr. Foster and Mr. Sperau an intentionally deceptive sales and profit forecast and capitalization requirement based on facts known to Ford management. Commencing in late February 1988 Don Kitchens, the Atlanta District Market Representation Manager, targeted Mr. Foster for the Selma, Alabama dealership. (R. 293, 295). Kitchens told Mr. Foster that "the vast majority of Ford minority dealers were profitable" and that "the vast majority of Ford minority dealers were making money." (R. 839). These representations were false.

5. On February 22, 1988 Mr. Foster was provided the first of two sales and profit forecasts by Don Kitchens for the Selma dealership. (R. 297-299). Mr. Kitchens explained that "the sales and profit forecast is used more or less as a prospectus for that dealership point. . . . " (R. 8340). Robert Sullivan, a senior Ford executive, admitted that the information known to Ford concerning the black dealer historical performance would be material in preparation of a sales and profit forecast for a newly appointed black minority dealer. (R. 928).

6. On February 25, 1988 Mr. Foster and Mr. Sperau declined to invest in the Selma dealership. (R. 1885). At that time Ford management was desperate to find a full time dealer as quickly as possible for Selma.[3] Ford

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[3] At the time Respondents went to Selma, the dealership was not making money. (R. 1030).

management also made it a "number one priority" to appoint a black dealer for Selma. (R. 1670, 1834). The Atlanta District Sales Office was assigned a quota of twelve minority dealers by year-end 1988 and the appointment of a black dealer for Selma would represent the eighth minority dealer in meeting the quota of twelve. (R. 1885). When Mr. Foster and Mr. Sperau rejected the Selma dealership Mr. Kitchens had exhausted his list of available black dealer candidates. (R. 1885-1887). Shortly after Mr. Foster and Mr. Sperau rejected the offer, Ford management manipulated the sales and profit forecast and capitalization requirement to show a return on guide investment of 65.4% and a capitalization requirement of $535,000. (C. 4194). Mr. Kitchens told Mr. Foster that the sales and profit forecast and capitalization requirement were reliable. (R. 305). Based upon the representations made by Ford management, including the representations made in the sales and profit forecast and capitalization requirement, Mr. Foster and Mr. Sperau were induced to acquire the Selma Ford dealership and thereby incur debt in excess of $1 million related thereto.

7. The evidence in the case established that the representations made by Ford management in the sales and profit forecast and capitalization requirement, as well as oral representations, were intentionally misleading based upon facts known to Ford.

a. Ford management knew that Mr. Foster and Mr. Sperau lacked experience in the operation of a Ford dealership. Respondents' lack of experience and lack of ability to obtain operating capital was the basis for Ford Motor Credit Company recommending rejection of their loan application. (R. 648). Respondents were able to raise

only $285,000 in unencumbered capital for the dealership – well short of the $350,000 Ford internal guideline for private capital dealerships. Nevertheless, Ford management represented that the dealership was adequately capitalized.

b. Ford management was also aware that Mr. Foster and Mr. Sperau would incur substantial debt service relating to the acquisition of the Selma dealership, which would create the high fixed costs identified as a second factor for black dealership losses.[4]

c. The geographic and demographic factors identified by Ford were also significant to the viability of the Selma, Alabama dealership.

8. Respondents' expert economist, Dr. Carter, opined that the sales and profit forecast and capitalization requirements provided by Ford to Mr. Foster and Mr. Sperau were not reasonable or reliable based upon historical information known to Ford. (R. 1255-57, 1319-23). There was clear and convincing evidence from which the jury could determine that Ford used intentionally misleading sales and profit forecasts to lure black dealer candidates to acquire Ford dealerships in less desirable locations. Dr. Carter concluded that based upon his examination of available data the increase in Ford's black dealer count and in funds invested by Ford black dealer

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[4] Ford's suggestion that the Selma Deason dealership with low debt service is at all comparable to the dealership acquired by Mr. Foster and Mr. Sperau with more than $1 million debt service is misleading.

candidates was inconsistent with the historical investment experience of the black dealer body of Ford, if the facts known to Ford management were disclosed to black dealer candidates (R. 1277). During the period 1982 through 1987, 42% of Ford's black dealers lost money. (R. 1267-69). The average return on guide investment for black dealers during the period 1982 through 1987 was 10.7%. (R. 1277). Notwithstanding the number of black loss Ford dealers and the low return on guide investment for black Ford dealers, the trend of investment rose during the period 1982 through 1987 from $11.3 million to $98.1 million of funds invested by black Ford dealer candidates. (R. 1276). Also, during the same period the Ford dealer count rose dramatically in comparison to both General Motors and Chrysler. Given the facts which were known to Ford management at the time they provided Mr. Foster and Mr. Sperau the sales and profit forecast and capitalization requirement in this case showing a 65.4% return on investment, the finder of fact could do no less than determine that the representations made were intentionally misleading.

9. In accordance with Ala. Code 1975, § 6-11-20 the jury was instructed that it could award punitive damages "only if it is shown by clear and convincing evidence that the fraud or deceit was an intentional misrepresentation, deceit or concealment of a material fact the concealing party had a duty to disclose, which was gross, oppressive, or malicious and committed with the intention on the part of the defendant of thereby depriving a person or entity of his property or legal rights or otherwise causing injury." (R. 2105). Ford did not object to any of the jury instructions given by the trial court, including those on

intentional fraud and damages. (R. 2076-2115). The jury returned a verdict in favor of the plaintiffs which included an award of punitive damages in the amount of $6 million. The jury also returned a verdict in favor of Ford Motor Credit Company in the amount of $635,000.

10. On April 28 and 29, 1994 the trial court heard extensive evidence bearing on the issue of the jury's punitive damages verdict in this case.[5] In the course of the trial court's hearing of the evidence, David Smith, Ford's Manager of Minority Dealer Operations and Training Department, explained Ford's motives for suppressing the disclosure of material facts to its dealer candidates in the following excerpt from his testimony:

> Q. Do you believe that Ford Motor Company should encourage its managers, district managers or those persons who were involved in the appointment process they should disclose whatever information, as long as it is not privileged, to an applicant?
>
> A. No because I think that's like saying a discouragement rather than an encouragement. If someone says, well, if you go into this business you know all these guys over there lost money, that's a discouragement. And we don't want to discourage people to go into business if they qualify. It's our business to encourage people to go into business. (R. 2376-2377).

Upon thorough review of the law and evidence applicable to the case, the trial court determined that there was clear and convincing evidence supporting the jury's

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[5] The trial court's *Hammond* order is reproduced at pages 43a through 52a of the Petitioner's Appendix.

award of punitive damages in the amount of $6 million. On July 1, 1994 plaintiffs filed their notice of acceptance of remittitur which resulted in a final judgment for the plaintiffs against Ford Motor Company in the amount of $1,692,000 in compensatory damages and $6 million in punitive damages. (C. 4114).

11. On June 9, 1995 the Supreme Court of Alabama issued its *per curiam* opinion affirming the verdict and judgment entered in the case. The Supreme Court of Alabama was unanimous in its determination that Ford had committed an intentional fraud against the plaintiffs supporting the award of punitive damages.[6]

REASONS FOR DENYING THE WRIT

1. There Are No Special And Important Reasons For Granting A Writ In This Case.

This Court has previously decided the issues controlling in this case in its decisions in *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S. Ct. 1032, 113 L.Ed.2d 1 (1991), and *TXO Production Corp. v. Alliance Resources Corp.*, ___ U.S. ___, 113 S. Ct. 2711, 125 L.Ed.2d 366 (1993).

The procedures utilized by the trial court and by the Supreme Court of Alabama in this case for review of the punitive damages award were those approved by this

[6] The dispute concerning the award of punitive damages in excess of $250,000 was based upon an incorrect assumption on the part of the dissenting justices concerning the applicability of a statutory cap to the facts of the case.

Court in *Haslip, supra.* Ford presents no compelling reasons for this Court to reconsider its prior decisions nor does Ford show any violation of due process in this case.

2. Ford Had Fair Notice That Its Commission Of An Intentional Fraud Would Subject It To The Imposition Of Punitive Damages In This Case.

At the trial of this case Ford agreed that the jury instructions regarding intentional fraud and damages were correct statements of Alabama law applicable to this case. The following excerpt from the punitive damage instruction given by the trial court is particularly germane to Ford's argument on lack of fair notice:

> [I]f you are reasonably satisfied that the defendant has been shown by clear and convincing evidence to be guilty of an intentional misrepresentation, deceit or concealment of a material fact, that he had a duty to disclose, which was gross, oppressive, or malicious, and committed with the intention on the part of the defendant of thereby depriving the plaintiff of his property or of legal rights or otherwise causing injury to the plaintiffs, and the plaintiffs did in fact suffer injury or damage as a proximate result of such fraud or deceit, then in your discretion you may award the plaintiff punitive damages in addition to any actual damages you find from the evidence the plaintiffs did suffer. (R. 2106).

Ford has waived any constitutional attack on the ground that it had no fair notice that its commission of an intentional fraud could subject it to an award of punitive damages. By its assent to the jury instructions

Ford agreed that if the jury found that Ford had committed an intentional fraud against the Respondents, punitive damages could be awarded. *See TXO, supra,* 123 L.Ed.2d at 383 (discussing failure to object to iury charge as waiver).

Ford ineffectively attempts to disguise a sufficiency-of-the-evidence, factual argument as a due process constitutional issue. Ford seeks a *de novo* hearing on the facts determined by the jury. Ford asks this Court to substitute its discretion for that of the trial court and the Supreme Court of Alabama regarding the finding that there was clear and convincing evidence to support the jury's determination that Ford perpetrated an intentional fraud.

Mr. Foster and Mr. Sperau contended and proved that Ford intended to cause them harm by inducing them through intentional fraud to acquire the Selma Ford dealership and to thereby incur over $1 million of debt related thereto. However, Ford argues that the imposition of punitive damages in this case is contrary to Ala. Code 1975, § 6-11-20 and is thus a denial of due process because there is no evidence that Ford intended to cause Respondents harm. Ford advances the preposterous argument that it intended that Mr. Foster and Mr. Sperau succeed when the fraud was perpetrated; therefore, its good motives should negate any intent to harm. Pet. at 22.

The evidence in this case, as summarized by the trial court in the following excerpt from its *Hammond* order, makes apparent that Ford's argument on this point is frivolous:

"There was evidence from which the jury could find, by a clear and convincing standard, that Ford Motor Company committed fraud against the Plaintiffs in inducing them to incur debt in excess of $1 million in order to acquire and operate a Ford dealership in Selma, Alabama. Accordingly, this Court finds that the actual harm suffered by the Plaintiffs due to the Defendants' fraudulent conduct and its duration supports the jury's punitive damages award in this case.

"There was also evidence from which the jury could determine, by a clear and convincing standard, that the deception of the Plaintiffs was committed with Ford's knowledge of the financial condition of the Plaintiffs, their degree of experience, the profitability and loss experience of black dealers participating in the Minority Dealer Program under circumstances similar to the Plaintiffs, and the economic impact the failure of the dealership would have on the Plaintiffs. Having considered the evidence bearing on the issue of the intentional misconduct engaged in by Ford with regard to the Plaintiffs, this Court finds that such evidence supports the amount of punitive damages awarded by the jury.

* * *

"There was evidence from which the jury could find, by a clear and convincing standard, that Ford defrauded the Plaintiffs by using sales and profit forecasts and capitalization requirements which were deceptive based upon facts known to Ford. Other evidence provided by a clear and convincing standard, a rational basis for the jury's punitive damages award. At the

> same time Ford management was aggressively recruiting black dealer candidates, including Samuel R. Foster, II, with sales and profit forecasts showing returns on investment of 65.4%, Ford management was telling its Board of Directors that it expected these same new black dealer candidates would be black loss dealers.
>
> "Although a Program designed to give black dealer candidates the opportunity to acquire an automobile dealership may be a laudable objective, the end of meeting an extremely aggressive black dealer count does not justify the perpetration of an intentional fraud. . . . "

Pet. App., 27a-29a.

The issue of Ford's intent to deceive was properly a question for the jury in this case. The jury, having heard the evidence, did not accept that Ford intended Respondents no harm when it fraudulently induced them to incur over $1 million of debt to acquire the Selma Ford dealership. The trial court recognized that Ford's motivation was not so pure and beneficent as Ford would have this Court believe:

> "Another of the factors to be considered is whether the Defendant profited or received a benefit from its misconduct. Ford derived a substantial benefit from its recruitment of black dealer candidates including the Plaintiffs. Ford management stated in the October, 1987 Equal Opportunity Progress Report that i[t]s black dealerships had sales of Ford products amounting to $1 billion. The corporate benefit of the black dealer body in dollars to Ford is significant. The Plaintiffs point out that River City

> Ford sold approximately $15 million in Ford products. They also maintain that the black dealer program provided Ford the added benefits of positive corporate image and a means of keeping dealerships in less desirable geographic locations in business."

Pet. App., 29a.

The jury, the trial court, and the Supreme Court of Alabama did not abuse their independent discretion in determining that Ford's perpetration of an intentional fraud against the Respondents warranted the imposition of punitive damages under Alabama law in this case.

3. The Punitive Damage Award In This Case Does Not Violate The Due Process Clause Of The Fourteenth Amendment On The Ground of Excessiveness.

The most telling fact accentuating the baselessness of Ford's petition is that Ford cites neither *Haslip* nor *TXO*, this Court's controlling precedents, in support of its argument that the punitive damage award in this case is excessive. Ford effectively concedes that there has been no violation of due process under the Fourteenth Amendment as construed under these decisions.

Since existing precedents do not support its argument, Ford relies instead on an undecided case, *BMW of North America, Inc. v. Gore*, No. 94-896. Ford recognizes, though, that *BMW* is distinguishable from the instant case for the reason that "the ratio of punitive damages to compensatory damages in this case is not enormous (as it is in *BMW*). . . . " Pet., 25.

Having failed to show that *BMW* could conceivably apply in this case, Ford resorts once again to a factual argument, contending that "the conduct for which Ford is being punished is minimally (if at all) reprehensible." Pet., 25. The reprehensibility of the wrong is a specific factor which must be considered by the trial court and reviewed by the Supreme Court of Alabama in any case in which punitive damages have been awarded. *See Haslip, supra.* The reprehensibility of the wrong committed by Ford in this case was determined by the jury based on the evidence, was specifically reviewed and addressed by the trial court in its *Hammond* order, and was again reviewed and addressed by the Supreme Court of Alabama. Ford has received the legal process and protection to which it was due under the law of Alabama and under the Fourteenth Amendment.

Ford has distorted selected facts in order to minimize the gravity of its fraudulent conduct. Ford maintains that data contained in its Equal Opportunity Progress Reports ("EOP Reports") were immaterial to the Respondents because (1) the data in the EOP Reports would have been misleading to them because they were private capital dealers rather than dealer development operators, and (2) Mr. Sperau is white and the information in the EOP Reports relating to minority dealerships would be immaterial to a new, white-operated dealership.

It happens in this case that the Respondents, one of whom is African-American, were solicited by Ford to participate in Ford's Minority Dealer Program, which Program is the subject of the EOP Reports. It is Ford which made the fact that Mr. Foster is African-American the *sine qua non* to the solicitation of Respondents for the

Selma Ford dealership. However, one of the most significant facts stated in the EOP Reports has nothing whatsoever to do with the race of the dealer, but rather relates to the experience of the dealer.

Robert Sullivan, a senior Ford executive who assisted in the preparation of the EOP Reports, made the following admission upon reading an excerpt from the 1987 Report:

> Q. Read that bottom paragraph to the jury, please.
>
> A. *"Because of the marginal profitability of newly appointed dealers and our aggressive black dealer appointment target we will continue to have a high number of black loss dealers until they gain more retail experience."*
>
> Q. *Was that true in November of 1987?*
>
> A. *Yes.*
>
> Q. *And did the management of Ford know that to be true?*
>
> A. *Yes.*
>
> Q. *That you had marginal profitability of newly appointed black dealers.*
>
> A. *Yes, it says marginal profitability of newly appointed dealers.*
>
> Q. *Wasn't this referring to minority dealers?*
>
> A. *Yes, it is. Also is true for non-minority dealers.*

(Emphasis added.) (R. 1748-49).

Mr. Sullivan and Ford management were well aware that newly appointed Ford dealers experienced "marginal

profitability" – without regard to race. Yet, even knowing this fact, Ford induced Respondents, and other new dealer candidates, with sales and profit forecasts showing substantial returns on investment, which in Respondents' case was 65.4%.

Ford Motor Credit also recognized the significance of the fact that Respondents were new dealer candidates with no experience in the operation of a Ford dealership. Ford Motor Credit management cited lack of experience as the primary factor in recommending rejection of Respondents' loan application. (R. 635, 644-45, 648). Ford Motor Credit knew that, as new dealer candidates, Respondents would not attain 65.4% return on their investment, that consequently the dealership would lack adequate capital going in, and that with no means of raising additional capital, Respondents constituted a poor credit risk to Ford Motor Credit. The facts known to Ford and its subsidiary regarding new dealer profitability experience, given the representations made to Respondents by Ford concerning the reliability of the sales and profit forecasts and capitalization requirements, were unquestionably facts as material to Respondents in incurring over $1 million in debt to acquire the Selma Ford dealership as those same facts were material to Ford Motor Credit in making its credit decision regarding that same dealership.[7]

The fact that Respondents were new dealer candidates is significant as well to Ford's argument that the group statistics in the EOP Reports were immaterial

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[7] Ford, which is experienced as a franchisor and offeror of securities to public investors, routinely discloses this type of information in its solicitation.

because the statistics included dealer development operators, not just private capital operators. The one universal constant which was known to Ford was that newly appointed dealers – minority and non-minority, private capital and dealer development – were "marginally profitable." Moreover, Robert Sullivan acknowledged that this fact would be material in preparing a sales and profit forecast for a new minority dealership. (R. 927-29).

Mr. Foster, contrary to Ford's representations, actively participated in the management and operation of the Selma dealership. This notwithstanding, Ford contends that because the Selma dealership was operated by Mr. Sperau, a white with no experience in the operation of a Ford dealership, that Ford had reason to believe that the facts contained in the EOP Reports would not apply because that information related only to minority operated dealerships. Even ignoring the fact that Mr. Foster is African-American for purposes of Ford's argument, the fact still remains that newly appointed dealers – minority and non-minority alike – had the same marginal profitability experience.[8]

Ford apparently still does not grasp the import of this evidence. Ford claims that it is being punished because it did not disclose misleading data, "which allegedly might have discouraged respondents from purchasing what at that time was a highly successful dealership." Pet., 25. The dealership, which Ford now admits

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[8] Even with Ford's start-up subsidies for a new minority dealership, River City Ford was unable to attain even one-half the 65.4% return on guide investment projected by Ford during its first year.

was a "highly successful dealership", was represented to Respondents by Ford management to be a low volume, low overhead operation that was not meeting its potential. The sales and profit forecast and capitalization requirement provided by Ford management to Respondents bore faint resemblance to the prior dealership historical volume, overhead, or profit. (C. 4194-95). Ford management knew that the assets of the Deason dealership could not be purchased and the successor dealership continue to operate at the same volume and overhead. Had Ford management admitted to Respondents at the time, as it has before this Court, that Ford considered the Deason dealership to be a "highly successful dealership", then there would have been no River City Ford because the numbers would not have supported the investment. Ford's statement begs the question: "If, in Ford's informed judgment, the Deason dealership was 'highly successful' based on its historical performance, then does this not prove that the 65.4% projection provided to Respondents by Ford as new dealer candidates was intentionally misleading?" This is absolutely the case based upon Ford's belated admission that the Deason dealership was meeting reasonable expectations for the Selma market for a well established dealership.

Ford's argument on the suppression issue turns logic on its head.[9] Ford's argument presumes that it had no choice but to provide the Respondents a sales and profit forecast showing a 65.4% return on investment and a

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[9] Respondents' suppression claim arose from the intentional misrepresentations made by Ford concerning the 65.4% return on investment and capitalization requirement.

capitalization requirement below Ford's minimum internal guidelines. However, Ford was not called upon or expected to provide the Respondents a sales and profit forecast or capitalization requirement of any kind, or for that matter to make any representations whatsoever concerning the Deason dealership, but when Ford *chose* to speak, the duty to speak the truth and to fully disclose material facts concerning its representations arose. The truth of the matter is that, based upon the facts known to Ford at the time the representations were made to Respondents, a 65.4% return on investment projection was affirmatively misleading (*i.e.*, unreasonable) to any new dealer candidate, white or black.[10]

CONCLUSION

At the *Hammond* hearing in this case Mel Farr, the Chairman of the Ford Lincoln-Mercury Black Dealer's Association, expressed succinctly the meaning of the jury's punitive damages verdict. When asked his understanding of the verdict Mr. Farr responded, "That a large sum of money was awarded because of the fact that Ford Motor Company lied to the investors." (R. 2410). Mr. Farr understands what this case is about, and it is not about conduct that is "minimally reprehensible."

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[10] Ford did not defend this case on the basis that the sales and profit forecast or capitalization requirement were reasonable; rather, Ford asserted that the Respondents could not justifiably rely upon the representations made by Ford.

Ford has presented no reason to grant *certiorari* in this case or to hold Ford's petition pending a decision in *BMW*.

Respectfully submitted.

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